



Exempt Action Final Regulation Agency Background Document

Approving authority name	State Air Pollution Control Board
Primary action	Article 6, 9VAC5-80 (Permits for Stationary Sources)
Secondary action(s)	None
Regulation title	Regulations for the Control and Abatement of Air Pollution
Action title	Minor New Source Review (Rev. J08)
Date this document prepared	November 4, 2008

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006(A) of the Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99)

Summary

Please provide a brief summary of the regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment.

The minor new source review (NSR) program (Article 6 of 9VAC5-80) covers stationary sources not covered by the major NSR program, and applies to the construction or reconstruction of new stationary sources or modifications (physical or operational changes) to existing ones. Exemptions are provided for smaller facilities. With some exceptions, the owner must obtain a permit from the agency prior to the construction or modification of the source. The owner of the proposed new or modified source must provide information as needed to enable the agency to conduct a preconstruction review in order to determine compliance with applicable control technology and other standards and to assess the impact of the net emissions from the facility on air quality. The regulation also provides the basis for the agency's final action (approval or disapproval) on the permit depending upon the results of the preconstruction review. The regulation provides a source-wide perspective to determine applicability based upon the net emissions changes due to or directly resulting from the modification (physical or operational change). Procedures for making changes to permits are included. There are provisions which allow the use of a general permit. The regulation also allows consideration of additional factors for making Best Available Control Technology (BACT) determinations for sources subject to minor new source review.

Currently, applicability for modifications is based on the net emissions increase in actual emissions based on all the source wide emissions changes due to or directly resultant from the physical or operational change. The provisions related to the applicability test for modifications have been changed from the

actual-to-potential emissions test to an uncontrolled-to-uncontrolled emission rate test. This involves (i) deleting the definition of "actual emissions," which contains the actual-to-potential test, and adding a new definition for "uncontrolled emission rate," and (ii) replacement of the text, "actual emissions" with the text, "the uncontrolled emission rate" throughout the regulation.

The provisions related to alternative fuels and air emissions have been updated to be consistent with §10.1-1322.4 and provide an exception from the requirement to submit the exemption demonstration for certain fuels. These provisions have also been restructured somewhat to ensure no conflict with federal law or regulation.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On October 23, the State Air Pollution Control Board took final action to adopt amendments to regulations entitled "Regulations for the Control and Abatement of Air Pollution", specifically, Minor New Source Review (9VAC5-80, Article 6). The regulatory action is to be effective as provided in the Administrative Process Act.

The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 a of the Administrative Process Act because they are necessary to conform to Virginia statutory law.

In adopting these amendments, the board affirmed that it will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.

Additional Information

Please indicate that the text of the regulation, the reporting forms the agency intends to incorporate or use in administering the proposed regulation, a copy of any documents to be incorporated by reference are attached.

Please state that the Office of the Attorney General (OAG) has certified that the agency has the statutory authority to promulgate the regulation and that it comports with applicable state and/or federal law.

If the exemption claimed falls under § 2.2-4006 A 4 c of the APA please identify the federal law or regulations being relied upon for the final agency action.

The text of the regulation is attached.

Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare. Letters providing written assurance from the Office of the Attorney General that (i) the Board has statutory authority to promulgate the final regulation amendments and (ii) the amendments qualify as an exemption under § 2.2-4006 A 4 a of the Administrative Process Act are available upon request.

Family Impact

Assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

It is not anticipated that these regulation amendments will have a direct impact on families. However, there will be positive indirect impacts in that the regulation amendments will ensure that the Commonwealth's air pollution control regulations will function as effectively as possible, thus contributing to reductions in related health and welfare problems.

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